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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,161	11/27/2001	Sunil Puria	RXSD 1022-1	2113

22470 7590 07/19/2005

HAYNES BEFFEL & WOLFELD LLP
P O BOX 366
HALF MOON BAY, CA 94019

EXAMINER	
TRAN, NGHI V	

ART UNIT	PAPER NUMBER
2151	

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/996,161	PURIA ET AL.	
	Examiner	Art Unit	
	Nghi V. Tran	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 April 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 4, 8, 10-12, 14-15, 18, 20-22, 25, 27-29 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Horn et al., U.S. Patent No. 6,379,314 (hereinafter Horn).

3. With respect to claims 1, 11, 21, and 27, Horn teaches a method of testing the hearing of a user utilizing a computer system, the computer system including a computer and a speaker, the computer operable to generate an electrical signal and then to output the electrical signal to the speaker, the speaker operable to convert the electrical signal into a stimulus, the method comprising:

(a) downloading a computer program from a server to the computer [col.4, lns.25-30];

(b) executing the computer program on the computer including providing a digital stimulus signal comprising a combination of a first sub-stimulus and

second sub-stimulus; the first sub-stimulus being within the audible range of humans, the second sub-stimulus being outside of the audible range of humans [col.4, ln.14 - col.5, ln.51 i.e. "during this study the decibel level is tested in 10dB increments to 120dB for each frequency tested unit consecutive responses are elicited"];

(c) generating a stimulus using the digital stimulus signal [col.6, lns.14-34]; and

(d) receiving an input [i.e. by clicking a computer mouse or pressing a key on the keyboard] from the user that indicates the user heard the stimulus [col.3, lns.14-40 and col.6, lns.35-50];

4. With respect to claims 2 and 22, Horn further teaches the act of downloading the computer program includes transferring the computer from the server to the computer via the Internet [col.3, lns.14-20].

5. With respect to claims 4, 14, 28 and 34, Horn further teaches the act of generating a stimulus includes generating a stimulus from an audio stream that utilizes a larger number of bits to represent the stimulus than would be utilized to represent the first sub-stimulus [col.7, lns.58-63].

6. With respect to claims 5, 15, 22, and 29, Horn further teaches the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a

second sub-stimulus, the first sub-stimulus having amplitude that is smaller than the amplitude of the second sub-stimulus [col.7, lns.17-30].

7. With respect to claims 8, 18, 25, and 32, Horn further teaches the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, wherein the second sub-stimulus includes white noise [col.7, lns.31-44].

8. With respect to claims 10 and 20, Horn further teaches steps e) sending first data to the server [col.4, lns.57-67]; f) qualifying the hearing of the user [col.4, lns.46-56]; and g) sending second data to the computer [col.4, lns.57-67].

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 3 and 13 are rejected under 35 U.S.C.103(a) as being unpatentable over Horn, as applied to claims 1 and 11 above, and further in view of "Official Notice".

11. With respect to claims 3 and 13, Horn teaches the method of claim 1, wherein the act of downloading the computer program includes transferring the computer program from the server to the computer but is silent on teaching via an email. "Official Notice" is taken as to transferring of program from server to computer via email is old and well known in the art. The motivation for doing so would have been to have a copy of program and transfer using email and by attaching it in the email rather than copy it on a computer readable medium.

12. Claims 6, 16, 23, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn, as applied to claims 1, 11, 21, and 27 above, and further in view of Davis et al. U.S. Patent 6,201,875 (hereinafter Davis).

13. With respect to claims 6, 16, 23, and 30, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, but is silent on teaching the first sub-stimulus includes a Warble tone. Davis teaches first stimulus includes a warble tone. (Column 4 lines 58-67) (Column 5 lines 1-5). It would have been obvious at the time of applicant's invention to implement Horn's invention in Davis's invention to come up with stimulus, which includes a warble tone. The motivation for doing so would have been because to use the frequency and loudness of the tone to test for hearing loss.

14. Claims 7, 17, 24, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn, as applied to claims 1, 11, 21, and 27 above, and further in view of Priddy et al. U.S. Patent 5,774,216 (hereinafter Priddy).

15. With respect to claims 7, 17, 24, and 31, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, but is silent on teaching the second sub-stimulus includes a dithering signal. Priddy teaches second stimulus includes a dithering signal. (Column 1 lines 35-43It would have been obvious at the time of applicant's invention to implement Horn's invention in Davis's invention to come up with stimulus, which includes a dithering signal. The motivation for doing so would have been output due to using dithering signal would be zero.

16. Claims 9, 19, 26, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn, as applied to claims 1, 11, 21, and 27 above, and further in view of Gleeson III et al. U.S. Patent # 4,902,274 (hereinafter Gleeson).

17. With respect to claims 9, 19, 26, and 33, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, but is silent on teaching second sub-stimulus includes pink noise. Gleeson teaches second sub-stimulus includes pink noise. (Column 2 lines 22-27). It would have been obvious to one of ordinary skill in the art at

the time of applicant's invention to implement Horn's invention in Gleeson's invention to come up with second sub-stimulus includes pink noise. The motivation for doing so would have been because pink noise is a variation of white noise and pink noise when heard has a very soothing effect such as ocean surf which can be used for hearing test.

Response to Arguments

18. Applicant's arguments filed April 27, 2005 have been fully considered but they are not persuasive.

The Examiner does not agree with the Applicant's argument because Horn discloses a method of testing the hearing of a user utilizing a computer system, the computer system including a computer and a speaker, the computer operable to generate an electrical signal and then to output the electrical signal to the speaker, the speaker operable to convert the electrical signal into a stimulus, the method comprising: (a) downloading a computer program from a server to the computer [col.4, lns.25-30]; (b) executing the computer program on the computer including providing a digital stimulus signal comprising a combination of a first sub-stimulus and second sub-stimulus; the first sub-stimulus being within the audible range of humans, the second sub-stimulus being outside of the audible range of humans [col.4, ln.14 - col.5, ln.51 i.e. "during this study the decibel level is tested in 10dB increments to 120dB for each frequency tested unit consecutive responses are elicited"]; (c) generating a stimulus using the digital stimulus signal [col.6, lns.14-34]; and (d) receiving an input [i.e. by

clicking a computer mouse or pressing a key on the keyboard] from the user that indicates the user heard the stimulus [col.3, lns.14-40 and col.6, lns.35-50];

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi V. Tran whose telephone number is (571) 272-4067. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nghi V Tran
Patent Examiner
Art Unit 2151

NT

ZARNI MAUNG
SUPERVISORY PATENT EXAMINER